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Supreme Court, U.S.
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No. 04-478

IN THE SUPREME COURT OF THE UNITED STATES

STEVEN LOFTON, *et al.*,

Petitioners,

– v.–

SECRETARY, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENTS' OBJECTION TO MOTION OF THE CHILD WELFARE LEAGUE OF AMERICA FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF PETITIONERS

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RESPONDENTS' OBJECTION TO MOTION OF THE CHILD WELFARE LEAGUE OF AMERICA FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF PETITIONERS

Respondents object to the motion of the Child Welfare League of America for leave to file a brief amicus curiae in support of Petitioners in this proceeding. The reasons why leave should be denied are as follows:

1. The amicus brief that the Child Welfare League of America ("CWLA") wants to file sets forth the claim that Florida's gay adoption law is irrational because it conflicts with its own position on gay adoption and that of other organizations. Am. Brief, p. 11. It also says that social science regarding same-sex parenting puts the issue "beyond reasonable scientific dispute." Am. Brief, p. 19. The fact of the matter, however, is that no social science or expert testimony on gay parenting were ever presented to the district court at summary judgment. Brief in Opp., pp. 1-3. CWLA's arguments are therefore not relevant to the disposition of this case at summary judgment, and represent an unnecessary expansion of the issues in it.

2. Even if the policy preferences of CWLA and others were relevant to this case, those policy preferences confer no constitutional importance on the question presented. Congress itself has repeatedly rejected CWLA's policy preferences in legislating adoption policy, as when it mandated color-blind adoptions in the mid-1990's over the objections of CWLA and others who had advocated race-based adoptions for a generation, beginning in the early 1970's. Brief Amicus Curiae of the Hon. R.J. Ball, et al., Twenty-One Members of the Legislature of the State of Florida, *Lofton v. Kearney*, 358 F.3d 804 (11th Cir. 2004), pp. 5-9.

3. The same-sex parenting research that CWLA cites also fails to raise any important constitutional issues. Among other things, the research is fundamentally flawed.

CWLA relies, for example, on the work of Dr. Charlotte Patterson. Am. Brief, p. 16, n.18. In the last state court challenge to the gay adoption law, the trial court struck Dr. Patterson's opinion testimony regarding her own studies because she refused the trial court's order to produce the data she supposedly based them on, leading the court to question her impartiality in a written opinion. *Amer v. Johnson*, 4 Fla.L.Wkly.Supp. 854b (Fla. 17th Cir. 1997).

CWLA's same-sex parenting research also does not deal with the issue in this case, which concerns the welfare of children adopted by homosexual parents. The studies in this area do not involve adopted children. Rather, they involve the natural children of homosexual parents who have known the parent since birth and formed corresponding emotional attachments. Unlike adopted children, the children in CWLA's studies have not been drawn from a largely foster care population already at immensely greater risk of psychological disorder. *See* John G. Orme and Cheryl Fletcher, "Foster Family Characteristics and Behavioral and Emotional Problems of Foster Children: A Narrative Review," *in Family Relations*, Vol. 50, No. 1 (2001), pp. 3-15.

Additionally, only a tiny few of the relevant studies involve child rearing by gay men as opposed to lesbian women. As even Dr. Patterson admitted as late as 2004, "research on gay men who have chosen to become parents has barely begun," is "relatively recent" and "still sparse." Patterson, Charlotte J., "Gay Fathers," *in* The Role of the Father in Child Development 397, 407, 410 (Michael E. Lamb, ed., 2004). Such studies as exist are plagued by problems like small sample size, selection bias and varied sampling procedures. *Id.* at 404, 408. For this reason, Dr. Patterson acknowledges that "many important questions remain to be addressed, and there is much for future researchers to accomplish in this area." *Id.* at 410. As the court of appeals recognized, these and other grievous methodological flaws permeate the body of literature on this subject. Pet. App. 36a.

Rather than confront the shortcomings of the research in straightforward fashion, CWLA makes the suggestion – unsupported by a single piece of scientific or other authority – that same-sex parenting studies are somehow exempt from statistical rigor because they are psychological studies. Am. Brief, p. 18, n.25. Even the researchers CWLA relies upon disagree, however, as in the case of Dr. Patterson, who candidly notes that methodological flaws are a problem in the research, and recommends that future researchers correct the problem by employing "rigorous statistical procedures." *Id.* at 412; *see also* Judith Stacey and Timothy Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am. Soc. Rev. 159, 166 (2001)(stating "there are no studies of child development based on random, representative samples" of same sex parent households); *see also* Brief Amicus Curiae of the Hon. R.J. Ball, et al., Twenty-One Members of the Legislature of the State of Florida, *Lofton v. Kearney*, 358 F.3d 804 (11th Cir. 2004), pp. 12-16.

CONCLUSION

Given the foregoing, CWLA's proposed amicus brief is not relevant to the issues in this case, unnecessarily expands those issues, and raises no constitutionally significant points bearing on the question of whether this case merits certiorari. CWLA's motion should therefore be denied.

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